
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
)
Petition of PTI Pacifica Inc. for Waiver of)
Section 54.314 of the Commission's Rules)
)
)
)

To: The Commission

PETITION FOR WAIVER

PTI PACIFICA INC.

Kenneth D. Patrich
L. Charles Keller
Timothy J. Cooney
WILKINSON BARKER KNAUER, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037
(202) 783-4141
Its Attorneys

February 8, 2008

TABLE OF CONTENTS

I.	FACTUAL BACKGROUND.....	1
II.	GOOD CAUSE EXISTS FOR A WAIVER OF SECTION 54.314.....	3
A.	PTI Made a Reasonable and Good-Faith Attempt to Comply With the Rules, and Its Late Filing Will Have No Negative Impact	4
B.	PTI's Late Filing Resulted From Unforeseeable Third-Party Error	7
C.	Grant of the Waiver Petition Will Serve the Public Interest.....	8
	CONCLUSION.....	8

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
)
Petition of PTI Pacifica Inc. for Waiver of)
Section 54.314 of the Commission's Rules)
)
)
)

To: The Commission

PETITION FOR WAIVER

PTI Pacifica Inc. (“PTI”), a wireless services provider and eligible telecommunications carrier (“ETC”) serving the Commonwealth of the Northern Mariana Islands (“CNMI”) hereby seeks a waiver of Section 54.314 of the Commission’s Rules¹ to permit it to receive Local Switching Support (“LSS”) for the first and second quarters of 2008. As discussed below, PTI reasonably believed it had timely filed its rural use certification. Under Commission precedent, special circumstances described below warrant grant of a waiver, and the public interest would be served by permitting PTI to continue to receive the support upon which it relies to provide service to a remote and difficult-to-serve insular territory.

I. FACTUAL BACKGROUND

On August 30, 2007 – more than a month in advance of the October 1 filing deadline – PTI mailed its rural use certification to the Universal Service Administrative Company (“USAC”) via certified U.S. Mail, return receipt requested. On September 18, 2007, the letter

¹ 47 C.F.R. § 54.314.

was signed for, and PTI received confirmation from the U.S. Postal Service of the letter's receipt by the addressee (attached as **Exhibit A**).

In January 2008, however, PTI learned from the National Exchange Carrier Association ("NECA") that its certification had not been received and it would not receive LSS for first quarter 2007. On January 22, 2008, PTI personnel spoke with Michael Spead, a senior manager at USAC, and explained that there must be an error, since PTI had a return receipt for the certification. After faxing the return receipt to Mr. Spead, PTI was told that the person who signed the return receipt was not a USAC employee, and USAC had never received the certification. At that point it became clear that PTI had mailed the certification to USAC's *former* address at 2120 L Street, NW, Suite 600, Washington, DC 20037. At some point in the past, however, USAC moved one block east to 2000 L Street, but PTI was unaware of this. PTI has used the 2120 L Street address for all of its prior USAC submissions, and had never had a problem previously.

At Mr. Spead's direction, PTI immediately obtained an updated certification from the CNMI Governor and sent it to USAC's new address on January 28, 2008. Because USAC is treating PTI's original, timely filing as invalid, PTI will be considered ineligible for LSS for first and second quarters of 2008,² and will be denied approximately \$309,732 in support.

PTI is a wireless ETC in the CNMI, an insular chain of islands stretching over 300 miles of the Pacific Ocean, located approximately 6,000 miles from the continental U.S. CNMI's population of approximately 80,000 people is spread primarily over the islands of Saipan, Tinian and Rota. In the CNMI more than half of the population consists of non-U.S. citizens who, in

² 47 C.F.R. § 54.314(d)(3).

turn, constitute over 77 percent of the labor force on Saipan and work predominantly in low-wage occupations. As of the last Census, the median per capita income in the CNMI was only 42.4 percent of the U.S. average.³ The CNMI has also recently lost two significant industries. Given that PTI serves approximately 23,000 customers, the loss of \$309,732 for the first six months of 2008 will represent a loss of revenue of approximately \$13.32 per working loop.

PTI has been receiving LSS since it was designated as an ETC and has always filed its certifications and line counts on a timely basis. This demonstrates that PTI's internal processes are sufficient to ensure that its USAC filings are timely. In light of the instant situation, however, PTI has updated its internal procedures to provide that the personnel responsible for making USAC filings shall check USAC's website on the day that each filing is sent to ensure that the filing is being delivered to the most up-to-date USAC address. This will ensure in the future that PTI always uses the correct USAC address.

II. GOOD CAUSE EXISTS FOR A WAIVER OF SECTION 54.314

Pursuant to section 1.3 of its rules, the Commission may waive any of its rules, in whole or in part, if there is good cause to do so.⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁵ In numerous cases, the Commission has granted waivers to accept late filings from USF recipients who, like PTI, made reasonable efforts to ensure a timely filing, but failed to do so as a result of

³ See U.S. Census Bureau, 2000 Census, American Finder, available at <www.census.gov>.

⁴ 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.").

⁵ See *Smithville Telephone Company, Inc.*, CC Docket No. 96-45, Order, 19 FCC Rcd 8891, 8892 (WCB 2004); see also *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis), *cert. denied*, 409 U.S. 1027 (1972).

inadvertence, clerical error, or third-party mistake, and the public interest would be served by granting a waiver.⁶ As explained below, the circumstances in PTI's case are even more compelling than in many of the prior cases granting waivers. Thus, the Commission should waive Section 54.314 to accept PTI's late-filed rural use certification.

A. PTI Made a Reasonable and Good-Faith Attempt to Comply With the Rules, and Its Late Filing Will Have No Negative Impact

In prior cases, the Commission has waived filing deadlines for USF recipients who made reasonable and good-faith attempts to comply with the rules, where the late filing would have little or no negative impact. In 2007, the Bureau granted a waiver of the Interstate Access Support line-count filing deadline to a carrier that had mailed its line-count data to USAC via certified mail one day before the filing deadline, though USAC did not receive it until one day after the deadline.⁷ The carrier implemented changes to its filing procedures to ensure that its future filings would be timely.⁸ The Bureau determined that the carrier's efforts "represent[ed] a good faith attempt to comply with the Commission's deadlines and minimize[ed] any negative impact on USAC or other IAS funding recipients," and granted a waiver of the filing deadline.⁹

Similarly, the Commission has waived filing deadlines for USF recipients who sent filings to USAC well in advance, but the filings were not received until after the filing deadline.

⁶ See *infra* notes 5-19 and associated text.

⁷ *NPCR, Inc. Petition for Waiver*, CC Docket No. 96-45, Order, 22 FCC Rcd 560, 561 ¶¶ 4-5 (WCB 2007).

⁸ *Id.*

⁹ *Id.* at 563 ¶ 8.

The Bureau concluded that such “carriers acted reasonably and in good faith in their attempts to ensure that their filings were received by the deadlines,” and granted waivers.¹⁰

The Commission has even waived its USF filing requirements in cases of simple oversight or misunderstanding of the filing deadline or requirement. For example, the Commission granted a waiver to a carrier that mistakenly filed a high-cost use certification rather than an ICLS certification.¹¹ Similarly, the Commission granted a waiver to a carrier that filed line count data late “due to an oversight by the personnel responsible for compiling and filing the line count data.”¹²

PTI’s case is strikingly similar to that of Valor Telecommunications of Texas, L.P., which erroneously sent its line count data to a former USAC data collection vendor after USAC switched to a new vendor in 2004.¹³ Just as PTI received an erroneous return receipt from the U.S. Postal Service, Valor received an email response from the prior USAC vendor indicating that the information would be forwarded to the person responsible for collecting such data.¹⁴ The Bureau granted a waiver, finding that “Valor timely filed, but with the wrong vendor.” PTI, too, timely filed – it merely sent the filing to an old address for USAC, and received an apparently accurate return receipt from the Postal Service that USAC received the filing, which receipt prevented PTI from recognizing its error.

¹⁰ *Petitions of Benton/Linn Wireless, LLC, et al.*, CC Docket No. 96-45, Order, 20 FCC Rcd 19212, 19220 ¶ 18 (WCB 2005).

¹¹ *North River Telephone Cooperative*, CC Docket No. 96-45, Order, 21 FCC Rcd 14937 (WCB 2006).

¹² *AT&T Communications of NY and AT&T Communications of California Petition for Waiver*, CC Docket No. 96-45, Order, 22 FCC Rcd 953, 954 ¶ 4 (WCB 2007).

¹³ *Valor Telecommunications of Texas, L.P., Request for Review*, 21 FCC Rcd 249, 250 ¶ 4 (WCB 2006).

¹⁴ *Id.* at 251 ¶ 5.

As described above,¹⁵ PTI made reasonable and conscientious efforts, equal to or better than those of petitioners who previously received waivers, to ensure that its rural use certification was received by USAC by the October 1 due date. PTI obtained and mailed the certification more than a month in advance; thus, PTI had every reason to believe the certification would be received in time. PTI sent the certification via a secure delivery method with proof of delivery – U.S. certified mail, return receipt requested. Moreover, PTI *actually received confirmation of receipt* of the certification, well in advance of the due date. PTI did not know that its certification had not been received until it did not receive support in January 2008. At that time, PTI immediately filed a new certification with USAC, and submitted the instant waiver request.

Like the other petitioners that have been granted waivers, PTI too has implemented changes to its procedures to ensure that this type of filing problem will not recur. Specifically, PTI has modified its internal procedures to provide that the personnel responsible for USAC filings will check USAC’s website on the day that the filing is sent to confirm that it is being sent to the correct and most up-to-date address.

Finally, as in these other cases, PTI’s late filing will not cause any hardship to USAC or other USF recipients. PTI’s late-filed document was its rural use certification. PTI’s line count data has always been received by USAC, and PTI’s line counts have always been included in USAC’s quarterly projections. Thus, grant of this waiver will have no impact on USAC, other funding recipients, or the operation of the fund.

¹⁵ See *supra* Section I.

B. PTI's Late Filing Resulted From Unforeseeable Third-Party Error

The Bureau has specifically concluded that “unusual and unforeseeable occurrences attributable to third parties” constitute special circumstances justifying a waiver of USF recipient filing deadlines.¹⁶ In that case, the petitioners had experienced: (1) an unusual delay in mailing time; (2) misrouting by an overnight courier service; (3) an apparent loss of mail by the U.S. Postal Service; and (4) unexpected delays by an express courier service.¹⁷ The Commission found that these acts by third parties were “unusual and unforeseeable” and granted waivers on that basis.¹⁸

Similarly, unusual and unforeseeable occurrences attributable to third parties are present in our case. First, the U.S. Postal Service delivered the certified letter to an entity other than the addressee, despite the fact that the U.S. Postal Service employee should have focused on the addressee in order to obtain a signed return receipt. Second, an unknown individual signed for the letter, even though he was not an employee or agent of USAC, to whom the letter was addressed. As a result of the unexpected acts of both of these third parties, PTI received a delivery confirmation from the U.S. Postal Service that provided it with a false sense of security that its filing had been received well before the due date.

Although PTI erred in sending the certification to an old address for USAC, it would have discovered this error but for the unusual and unforeseeable acts of the U.S. Postal Service and the signatory to the return receipt. Because PTI sent the certification more than a month in advance, it would have had plenty of time to re-file the certification if the original filing had been

¹⁶ *Benton/Linn et al.*, *supra*, 20 FCC Rcd at 19220 ¶ 8.

¹⁷ *Id.* at 19217-9 ¶¶ 13-16.

¹⁸ *Id.* at 19220 ¶ 17.

returned as undeliverable, as it should have been given that USAC was no longer at that address. It was solely because of the apparently accurate but improper signature on the return receipt that PTI was unaware of its error until it was too late to rectify.

Consistent with earlier precedent, these unexpected acts by third parties amply justify a waiver of the filing deadline for PTI.

C. Grant of the Waiver Petition Will Serve the Public Interest

As in other cases where routine USF filing deadlines have been waived, the public interest will be served by a waiver here.¹⁹ In this case, the inadvertent late filing would result in a loss of support amounting to fully \$13.32 per working loop. As noted above, PTI serves an extraordinarily remote, insular territory located an enormous distance from the U.S mainland, and thus faces substantially higher costs for materials and equipment. The islands making up the CNMI are often geographically challenging, and experience periodic and sometimes catastrophic damage from typhoons and other storm and tide activity. Under these circumstances, the public interest would be served by waiving the filing deadline for a routine certification in order to prevent the loss of \$309,732 in support to a carrier with only about 23,000 customers, consistent with prior waiver cases.

CONCLUSION

PTI reasonably believed it had filed its rural use certification on a timely basis, but was thwarted by an improper signature on the Postal Service's return receipt. Grant of a waiver is consistent with Commission precedent, and will serve the public interest by advancing PTI's

¹⁹ See *supra* notes 5-16; see also *AT&T Communications, supra*, 22 FCC Rcd at 955 ¶ 7; *MCI, Inc.*, CC Docket No. 96-45, Order, 21 FCC Rcd 14926 (WCB 2006).

ability to provide telephone service in its insular and difficult-to-serve study area, consistent with the goals of the universal service fund.

Respectfully submitted,

PTI PACIFICA INC.

By: /s/ L. Charles Keller
Kenneth D. Patrich
L. Charles Keller
Timothy J. Cooney
WILKINSON BARKER KNAUER, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037
(202) 783-4141

Its Attorneys

February 8, 2008

Exhibit A
Timely Certification and Return Receipt



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

August 21, 2007

Irene Flannery
Universal Service Administration Company
2120 L. ST NW Suite 600
Washington, DC 20037

Reference: FCC Docket 96-45 Universal Service Certification

Dear Ms. Flannery:

The CNMI Public Utilities Commission certifies that PTI Pacifica Inc dba PTI in rural study area code 659002 has submitted the required affidavit certifying the use of Universal Service Funds.

The affidavit signed by an officer of the PTI Pacifica Inc. certifies that all federal high cost support will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254 (e) of the Communications Act.

Sincerely,


Timothy P. Villagomez
Acting Governor

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Ms. Irene Flannery
Universal Service Admin Company
2120 L. ST NW Suite 600
Washington, DC 20037

2. Article Number (Copy from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) *Aerna Agui* B. Date of Delivery *9-18-07*

C. Signature *AG* ☐ Agent ☐ Address

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees \$ *5.01*

Postmark Here

Sent To **Ms. Irene Flannery**
Street, Apt. No., or PO Box No. **2120 L. ST NW Suite 600**
City, State, ZIP+4 **Washington, DC 20037**

PS Form 3800, August 2006

See Reverse for Instructions

7006 2150 0002 7428 0048

7006 2150 0002 7428 0048

Exhibit B
Declaration of Larry Knecht

I, Larry Knecht, hereby declare as follows:

I am the Executive Vice – President of PTI Pacifica Inc. (PTI);

I have reviewed the foregoing Petition for Waiver; and

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 7, 2008.



Larry Knecht